

**Rogaczewski, Joshua**

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**From:** Darcie Brault <DBrault@MichWorkLaw.com>  
**Sent:** Wednesday, October 23, 2013 15:21  
**To:** Rogaczewski, Joshua  
**Cc:** Burchfield, Bobby; Capotosto, Laura  
**Subject:** RE: Reese v. CNH Global N.V.: Disc. Issues

Counselors:

I will address the pension issue separately as soon as I have time to look at it more carefully, but at least at first blush, it appears that you are offering no solution for the problems articulated in my e-mail correspondence to you dated October 3, 2013. Please advise of your availability for a conference call with Judge Komives, who invited us to schedule one if our problems persist, see Pg ID 12800.

With respect to the stipulation to extend dates, when I last corresponded with you, I repeated my request that CNH consider a 60 day extension. No one responded. Since then, we received CNH's expert reports. As anticipated there is new information contained in the reports. The breadth of that information, however, was far greater than expected. While we could agree to a 60 day extension, there is simply no practical possibility that a 30 day extension will be sufficient.

Please advise if you will agree to a 60 day extension. Otherwise, I will go ahead and file a second motion to extend the scheduling order 90 days and requesting immediate consideration.

Regarding the "twenty-eighth document request," I was only able to find the time to look up the request seconds ago. At this time, my staff and I are preparing to respond to your subpoenas to each of the expert witnesses, one of which was just recently served. I expect to provide an on-time response on October 25, 2013. I would also expect that that response will satisfy your "twenty-eighth document request."

Please advise,

Darcie R. Brault, Esq.  
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**From:** Rogaczewski, Joshua [mailto:[jrogaczewski@mwe.com](mailto:jrogaczewski@mwe.com)]  
**Sent:** Wednesday, October 23, 2013 1:45 PM  
**To:** Darcie Brault

**Cc:** Burchfield, Bobby; Capotosto, Laura

**Subject:** Reese v. CNH Global N.V.: Disc. Issues

Darcie:

In response to your e-mails from yesterday, CNH remains of the strong view that the magistrate judge has directed the parties on how to proceed regarding Plaintiffs' interrogatories for pension-related information and CNH has done exactly what the magistrate judge has asked CNH to do in this matter.

As required by the magistrate judge's order, CNH provided Plaintiffs with the information retrievable from CNH's benefits or pension database related to class members' monthly pension payment from CNH, their credited service, and their pre-IPO credited service. With this information, Plaintiffs will be able to calculate class members' pre-IPO-related pension amount, just as CNH would have to do. As we have told you, CNH calculated, but did not retain or keep current the gross pension amount at the time of the IPO because it serves no business purpose. (The field referenced in your e-mail is blank because the present system was not used to calculate class members' pensions, and the data in the system for class members was imported into it. The gross-pension calculation was not saved and therefore did not exist to import.) Considering the burden of obtaining the gross pension amount and the value of this issue to the question before the Court, CNH has more than discharged its discovery obligations. *See* Fed. R. Civ. P. 26(b)(2)(C)(iii); *see also id.* R. 33(d). (CNH notes also that Plaintiffs could have – but have not – sought the pre-IPO pension information from the entity that is responsible for it, Pactiv.)

Nevertheless, CNH has undertaken a search for the benefit files Plaintiffs have identified. If the files can be located, CNH will – by the end of October – produce to Plaintiffs the pension-calculation documents contained in them without prejudice to CNH's position that the magistrate judge's order renders the documents unnecessary.

On a related note, please provide as soon as possible Plaintiffs' proposed stipulated order regarding the scheduling order. Further, please provide as soon as possible the documents responsive to CNH's twenty-eighth document request or confirm that Plaintiffs will not do so, so that we may bring the issue to the Court's attention.

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